



4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

**[SATS No: WV-122-FOR; Docket ID OSM-2013-0011
S1D1S SS08011000 SX064A000 201S180110
S2D2S SS08011000 SX064A000 20XS501520]**

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendments.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are approving amendments to the West Virginia regulatory program (the West Virginia program), under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) that contains both West Virginia statutory and regulatory revisions. West Virginia initially submitted an amendment to revise its West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA). Senate Bill 462 amends the West Virginia Code to conform to the State's requirements for informal conferences and decisions on

surface coal mining permit applications with parallel provisions of Federal law.

Committee Substitute for House Bill 2352 amends the West Virginia Code to provide tax incentives for coal mine operators who reclaim bond forfeiture sites. Subsequently, West Virginia submitted another amendment consisting of a Special Reclamation Tax Credit Rule to implement the proposed statutory revisions providing tax incentives to coal mine operators to reclaim bond forfeiture sites.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mr. Ben Owens, Acting Director, Charleston Field Office, Telephone: (304) 347-7158. E-mail: *chfo@osmre.gov*.

SUPPLEMENTARY INFORMATION:

- I. Background on the West Virginia Program
- II. Submission of the Amendments
- III. OSMRE's Findings
- IV. Summary and Disposition of Comments
- V. OSMRE's Decision
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I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of

surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the implementing Federal regulations. *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of this criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Submission of the Amendments

By letter dated August 14, 2013, and received electronically by us on August 16, 2013 (Administrative Record Number 1587), the West Virginia Department of Environmental Protection (WVDEP) submitted an amendment to its permanent regulatory program under SMCRA (30 U.S.C. 1201 *et seq.*). The amendment included changes to West Virginia's statute, the West Virginia Code (W. Va. Code), as contained in Enrolled Committee Substitute for House Bill 2352 and Enrolled Senate Bill 462.

Committee Substitute for House Bill 2352 amends W. Va. Code sec. 22-3-11(g) and (h) to provide tax incentives for mine operators who reclaim bond forfeiture sites. On April 13, 2013, the West Virginia Legislature adopted the Committee Substitute for House Bill 2352. On April 29, 2013, the Governor signed the statutory revisions into

law. These changes became effective under State law on July 12, 2013.

Senate Bill 462 amends W. Va. Code secs. 22-3-20 and 21 to ensure the State's requirements for informal conferences and decisions on surface coal mining permit applications conform, more closely, with parallel provisions of Federal law. The West Virginia Legislature passed Senate Bill 462 on April 11, 2013, and the Governor signed it into law on April 29, 2013. The changes became effective under West Virginia law on July 10, 2013. We announced West Virginia's proposed amendments in the May 20, 2014, **Federal Register** (79 FR 28858). In that notice we also opened the public comment period and provided an opportunity for a public hearing on the provisions (Administrative Record Number WV-1588). The public comment period closed on June 19, 2014.

On June 6, 2014, the West Virginia State Tax Department filed a Special Reclamation Tax Credit Rule with the Secretary of State to implement the special reclamation tax incentive revisions at W. Va. Code sec. 22-3-11(g) and (h) for coal mine operators who reclaim bond forfeiture sites within the State. The Committee Substitute for Senate Bill 167 authorized the statutory revisions. On March 8, 2014, the West Virginia Legislature passed the revisions to the statute. The Governor approved the bill on March 31, 2014. On August 7, 2014, WVDEP submitted the proposed rule to us at a meeting of the Special Reclamation Fund Advisory Council (Administrative Record Number WV-1597). The Special Reclamation Tax Credit Rule is set forth in the West Virginia regulations, known as the West Virginia Code of State Rules (CSR) at secs. 110-29-1 through 6. We announced the proposed regulatory revisions in the **Federal Register** on November 13, 2014 (79 FR 67396) and reopened the comment period to

provide the public 15 additional days to comment on the proposed rule (Administrative Record Number WV-1598). The public comment period closed on November 28, 2014.

III. OSMRE's Findings

Following are OSMRE's findings about West Virginia's amendments under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. As discussed below, we are approving the proposed State statutory and regulatory amendments with certain understandings. Any non-substantive wording or editorial changes that are not specifically discussed below have been approved without further discussion. However, the full text of the program amendment is available at <https://www.regulations.gov>.

A. W. Va. Code Sec. 22-3-11(g) and (h) - Special Reclamation Tax Incentive

In accordance with Committee Substitute for House Bill 2352, the State proposes to add new language to sec. 22-3-11(g) and (h) of the W. Va. Code, which encompasses the WVSCMRA, providing coal mine operators with tax incentives to reclaim bond forfeiture sites within the State.

Subsection (g)(3)(A) provides that a tax credit shall be granted against the special reclamation tax imposed by subsection (i) of W. Va. Code sec. 22-3-11 to any coal mine operator who performs reclamation or remediation at a bond forfeiture site, which otherwise would have been reclaimed using funds from the Special Reclamation Fund or Special Reclamation Water Trust Fund. West Virginia Code sec. 22-3-11(i), which is part of the West Virginia program, imposes a tonnage tax upon mined, cleaned coal. Proceeds generated by this tax are deposited in the Special

Reclamation Fund and the Special Reclamation Water Trust Fund. West Virginia Code sec. 22-3-11(g)(3)(B) provides that the amount of the reclamation tax credit granted shall be equal to the amount that the Tax Commissioner determines, based on the project costs as shown in the records of the Secretary, that would have been spent from the Special Reclamation Fund or Special Reclamation Water Trust Fund to accomplish the reclamation or remediation performed by the coal mine operator. This also includes expenditures for water treatment. West Virginia Code sec. 22-3-11(g)(3)(C) provides that to claim the credit, the mine operator must file with the Tax Commissioner a written application seeking the amount of the credit earned. Within 30 days of receipt of the application, the Tax Commissioner will issue a certification of the amount of tax credit to be allocated to the eligible taxpayer. If the amount of the credit is less than the amount applied for, the Tax Commissioner must set forth in writing the reasons for the difference. If no certification is issued within the 30-day period, the application will be deemed certified. Any decision of the Tax Commissioner is appealable pursuant to the West Virginia Tax Procedure and Administration Act as set forth in Chapter 11, Article 10 of the West Virginia Code. Applications for certification of the proposed tax credit must contain the information required and be in the detail and format as required by the Tax Commissioner.

These proposed revisions are intended to provide tax incentives for coal mine operators who reclaim bond forfeiture sites within the State that would normally be reclaimed by WVDEP's Office of Special Reclamation (OSR) through the State's alternative bonding system, which is commonly known as the Special Reclamation Fund. We are approving W. Va. Code sec. 22-3-11(g)(3) with the understanding that

the reclamation of a bond forfeiture site by another party must be done in a timely manner and in accordance with the approved reclamation plan or modification thereof, including the treatment of any water pollution discharge. Each reclamation plan should include a description of the measures an operator must take during the reclamation process to ensure the protection of the quality and quantity of surface water and groundwater systems. In addition, discharges from bond forfeiture sites within West Virginia are subject to National Pollutant Discharge Elimination System (NPDES) permitting requirements, including compliance with applicable water quality standards. An operator must demonstrate compliance with applicable effluent limitations and water quality standards to ensure that the hydrologic balance is preserved. Furthermore, as provided by W. Va. Code sec. 22-3-11(g)(3)(B), reimbursement for such reclamation must be limited to the amount of money that OSR would have expended to complete the bond forfeiture reclamation project. Finally, if the Tax Commissioner fails to issue a tax credit certification within the required time period, as provided by W. Va. Code sec. 22-3-11(g)(3)(C), the amount of reimbursement provided to the operator cannot exceed the estimated cost of reclamation by the State. Given these requirements, we find that the proposed revisions at W. Va. Code sec. 22-3-11(g)(3) are not inconsistent with the Federal bonding requirements at sections 509 and 519 of SMCRA (30 U.S.C. 1259 and 1269) and 30 CFR 800.11(e) and 30 CFR 800.50. Therefore, we approve West Virginia's submission.

The proposed addition of W. Va. Code sec. 22-3-11(h) grants the Tax Commissioner authority to promulgate rules for legislative approval to carry out the

purposes of this section. The pre-existing subsections (i) through (o) have been re-lettered to conform to the proposed changes.

The promulgation of legislative rules by the West Virginia Tax Commissioner, as provided by subsection (h), to implement the tax incentive requirements at subsection (g) are addressed in Finding D below. The other changes to W. Va. Code sec. 22-3-11(i) through (o) are found to be non-substantive; thus, requiring no further action.

B. W. Va. Code Sec. 22-3-20 - Informal Conference

In accordance with Senate Bill 462, West Virginia proposes to revise language extending the time to hold informal conferences on surface coal mining permit applications. Proposed subsection 20(b) provides when an informal conference will be held on a surface coal mining permit application. The State currently requires that informal conferences be held within three weeks after the public comment period closes. Under the proposed amendment, the Secretary must hold the informal conference on the surface coal mining permit application within a reasonable time after the close of the public comment period.

As proposed, subsection 20(b) provides that if any person with an interest that may be adversely affected by the mining operation or the officer or head of any Federal, state, or local governmental agency may file written objections and request an informal conference within 30 days of the last publication of the required legal advertisement. Upon a request, the Secretary shall hold an informal conference in the locality of the proposed mining operation within a reasonable time after the close of the public comment period. West Virginia did not explain its decision for changing

the timeframe for holding an informal conference on a permit application.

While the Federal regulations at 30 CFR 773.6(c)(2) also require the regulatory authority to hold an informal conference “within a reasonable time following the receipt of the request,” we encourage West Virginia to consider modifying its regulations at W. Va. CSR sec. 38-2-3.2.d and W. Va. CSR sec. 38-2-3.27.c.2 and specify a deadline for holding an informal conference on a permit application. When crafting the Federal regulations, we granted the regulatory authority discretion to determine what was “reasonable” in accordance with its approved program. Failure to hold a timely informal conference could result in unnecessary delays in rendering a decision on a permit application. Nevertheless, we find that the proposed revision at W. Va. Code sec. 22-3-20(b) is not inconsistent with the Federal informal conference provisions at 30 CFR 773.6(c) and 773.7(a) and section 513 and 514 of SMCRA (30 U.S.C. 1263 and 1264). Therefore, we are approving the proposed amendment to W. Va. Code sec. 22-3-20(b).

C. W. Va. Code Sec. 22-3-21 - Informal Conference

In accordance with Senate Bill 462, West Virginia proposes to extend the time in which the Secretary must issue or deny a permit application. Currently, if an informal conference is held, the Secretary must issue a decision granting or denying a permit, in whole, or in part, within 30 days of the informal conference. Under the proposed revision, West Virginia seeks to extend the time for the Secretary to issue or deny a surface coal mining permit from 30 days to 60 days.

The proposed State revision mirrors the Federal provisions at 30 CFR 773.7(a) and section 514 of SMCRA (30 U.S.C. 1264). We find the proposed

revision at W. Va. Code sec. 22-3-21(a) to be no less effective than the Federal informal conference provisions at 30 CFR 773.7 and no less stringent than section 514 of SMCRA. Therefore, we are approving the proposed amendment to W. Va. Code sec. 22-3-21.

D. W. Va. CSR Sec. 110-29-1 - Special Reclamation Tax Credit

This proposed amendment to the West Virginia regulations clarifies and implements the proposed revisions to W. Va. Code sec. 22-3-11(g) and (h) relating to special reclamation tax incentives for mine operators who reclaim bond forfeiture sites within West Virginia. West Virginia proposes to add the Special Reclamation Tax Credit regulations it proposed in W. Va. CSR secs. 110-29-1 through 110-29-6, which would represent a new section of the West Virginia regulations.

As discussed in OSMRE's November 13, 2014, **Federal Register** (79 FR 6739), non-substantive additions to W. Va. CSR sec. 110-29-2 include definitions of "Act," "Bond forfeited mine site," "Secretary," and "Tax Commissioner." Therefore, no further action is required regarding those changes.

Proposed W. Va. CSR sec. 110-29-1.5 clarifies that the special reclamation tax credit is only available to qualified operators for taxable years beginning on or after July 12, 2013. In addition, W. Va. CSR sec. 110-29-3.3 provides that the tax credit may only be taken against the special reclamation tax imposed under W Va. Code sec. 22-3-11.

Proposed W. Va. CSR sec. 110-29-2.4 defines "qualified operator" as any person who obtains a permit under the WVSCMRA to mine coal and perform reclamation on a bond forfeited mine site and that qualifies for the special reclamation tax credit.

Proposed W. Va. CSR sec. 110-29-4 sets forth requirements governing the

application for and the amount of the tax credit. Subsection 4 provides that a qualified operator may reclaim the bond forfeited mine site pursuant to either an Article 3 [surface or underground mining] permit or a reclamation agreement. The amount of tax credit granted to the qualified operator is based on the amount of money that would have been spent from the Special Reclamation Fund and the Special Reclamation Water Trust Fund on the bond-forfeited site for land reclamation and/or water treatment as determined and certified by the WVDEP Secretary

Proposed W. Va. CSR sec. 110-29-5 specifies operator eligibility requirements for the tax credit and the limitation of the tax credit. An operator is not eligible to receive a tax credit for performing reclamation on a mine site that he or she has previously forfeited. A qualified operator may use the tax credit to offset payment of, or liability for, the special reclamation tax for the tax year or carry it forward for use in future tax years until no credit is remaining.

Proposed W. Va. CSR sec. 110-29-6 contains general procedures to claim and administer the tax credit. The qualified operator must provide complete and accurate forms and other information to claim the tax credit. In addition, the qualified operator must maintain records to verify the validity of its eligibility for the tax credit and the amount of tax credit claimed. Finally, the Tax Commissioner has the authority to audit the qualified operator.

West Virginia currently has 268 bond forfeiture sites in various stages of land reclamation. In addition, water treatment activities are ongoing at 163 bond forfeiture sites, and water discharges at other bond forfeiture sites are being evaluated and may require treatment by the State. The proposed special reclamation tax credit requirements

are intended to provide the WVDEP an alternative means of reclaiming bond forfeiture sites under West Virginia's alternative bonding program. However, bond forfeiture reclamation, including water treatment, by a qualified operator or other party must comply with the same standards established under the approved program. Nothing in the proposed rule, as described above, can modify or supersede West Virginia's permanent regulatory program requirements as approved by OSMRE. It is with this understanding that we find the proposed Special Reclamation Tax Credit provisions at W. Va. CSR secs. 110-29-1 through 6 to be no less stringent than the Federal statutory bonding requirements at sections 509 and 519 of SMCRA and no less effective than the Federal regulations at 30 CFR 800.11(e) and 800.50. Therefore, we approve the proposed amendment.

IV. Summary and Disposition of Comments

Public Comments

We requested public comments on the proposed amendments; however, we did not receive any public comments.

Federal Agency Comments

On May 22, 2014, and September 22, 2014, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA (30 U.S.C. 1253), we requested comments on the amendments from various Federal agencies with an actual or potential interest in the West Virginia program (Administrative Record Numbers WV-1589 and WV-1601).

The Mine Safety and Health Administration, U.S. Department of Labor (MSHA) submitted its response on June 27, 2014, (Administrative Record Number 1591). MSHA

did not have any comments on the proposed changes to the revisions in West Virginia's permanent surface coal mining regulatory program.

The Bureau of Land Management (BLM) submitted its response on June 30, 2014, (Administrative Record Number 1592). The BLM did not have any comments on the proposed changes to the revisions in West Virginia's permanent surface coal mining regulatory program.

The Natural Resources Conservation Services (NRCS) submitted its response on June 27, 2014, (Administrative Record Number 1593). The NRCS did not have any comments on the proposed changes to the revisions in West Virginia's permanent surface coal mining regulatory program.

Environmental Protection Agency (EPA) Comments and Concurrence

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that West Virginia proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, on May 22, 2014 and September 22, 2014, under 30 CFR 732.17(h)(11)(i), we requested comments from the EPA on the amendments (Administrative Record Nos. 1589 and 1601). EPA did submit the following comments on the proposed State amendments.

On July 24, 2014, EPA Region III provided us with comments on the State's statutory proposal to provide operators tax incentives for reclaiming bond forfeiture sites. According to EPA, discharges from bond forfeiture sites are subject to NPDES

permitting requirements, including compliance with applicable water quality standards. In addition, the concept of reclamation includes protection and/or restoration of the hydrologic balance, including water quality. EPA noted that each reclamation plan should include a detailed description of the measures to be taken during the reclamation process to ensure the protection of the quality of surface and ground water systems, both on-site and off-site. EPA stated that the reclamation plan and funding mechanisms should account for the need to comply with applicable provisions of the Clean Water Act. EPA acknowledged that it supports all efforts toward finding the most effective approaches for mitigating future drainage problems from bond forfeiture mining operations. According to EPA, to prevent and/or remediate perpetual postmining drainage problems, it is important to have both a well-funded bonding program and incentives for operators to assist with reclamation of bond forfeiture mine sites.

On October 20, 2014, EPA submitted a response to our request for comments on the State's proposed Special Reclamation Tax Credit Rule. EPA acknowledged that it had reviewed the proposed amendment, but it would not be providing comments on it. However, they appreciated the opportunity to review the proposed revisions.

As discussed herein, we are approving the proposed amendments with the understanding that discharges from bond forfeiture sites within West Virginia will comply with NPDES permitting requirements, including applicable water quality standards. Furthermore, we agree that West Virginia's alternative bonding system must provide sufficient revenue to ensure that discharges from bond forfeiture sites will comply with applicable Clean Water Act provisions. We also agree that to prevent and/or remediate perpetual postmining drainage problems, it is important to have both a

well-funded bonding program and incentives for operators to assist with the reclamation of bond forfeiture mine sites. Finally, we find that the proposed amendments, if implemented as discussed herein, should ensure that WVDEP will be able to achieve these objectives, while providing operators incentives to assist in the reclamation of bond forfeiture sites within West Virginia.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under Federal regulations at 30 CFR 732.17(h)(4), we are required to solicit comments from the SHPO and ACHP on amendments that may have an effect on historic properties. Although we requested comments on both proposed State statutory and regulatory amendments, we did not receive comments from the SHPO or ACHP on either amendment.

V. OSMRE's Decision

Based on the above findings, we are approving amendments that provide tax incentives for operators who reclaim bond forfeiture sites and revisions to West Virginia's informal conference provisions as submitted by WVDEP on August 14, 2013 (Administrative Record Number WV-1587). However, as discussed in Finding A, above, we are approving the revisions to W. Va. Code sec. 22-3-11(g) with the understanding that the reclamation of a bond forfeiture site by another party must be done in a timely manner and in accordance with the approved reclamation plan or modification thereof. In addition, discharges from bond forfeiture sites are subject to NPDES permitting requirements, including applicable water quality standards. Reimbursement for such

reclamation must be limited to the amount of money that WVDEP would have expended to complete the bond forfeiture reclamation project. Finally, if the Tax Commissioner fails to issue a tax credit certification within the required time period, the amount of reimbursement provided to the operator cannot exceed the estimated cost of reclamation by the State. If, in future oversight reviews, we should determine that West Virginia is not applying these provisions in accordance with our approval, other amendments may be required.

We are also approving the State's Special Reclamation Tax Credit Rule, found at W. Va. CSR secs. 110-29-1 through 6 as submitted by WVDEP on August 7, 2014 (Administrative Record Number WV- 1597). West Virginia's proposed revisions at W. Va. Code sec. 22-3-11(g) clarify the special reclamation tax incentive provisions. However, as discussed above in Finding D, we are approving the Special Reclamation Tax Credit Rule with certain stipulations. Reclamation, including water treatment, by a qualified operator or other party at a bond forfeiture site under this amendment must comply with the same standards as required under the approved program. In addition, nothing in the proposed amendment can modify or supersede West Virginia's permanent regulatory program requirements as approved by us.

To implement these decisions, we are amending the Federal regulations at 30 CFR part 948 to codify decisions concerning the West Virginia program. In accordance with the Administrative Procedure Act (5 U.S.C. 553(d)(3)), this rule will take effect 30 days after the date of publication. Section 503(a) of SMCRA (30 U.S.C. 1253(a)) requires that a State program demonstrate that such State has the capability of carrying out the provisions of the Act and meeting its purposes. SMCRA requires consistency of

State and Federal standards.

VI. Statutory and Executive Order Reviews

Executive Order 12630 – Governmental Actions and Interference with Constitutionally Protected Property Rights

This rule would not affect a taking of private property or otherwise have taking implications that would result in property being taken for government use without just compensation under the law. Therefore, a takings implication assessment is not required. This determination is based on an analysis of the corresponding Federal regulations.

Executive Order 12866 - Regulatory Planning and Review and 13563 – Improving Regulation and Regulatory Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993, the approval of state program amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

Executive Order 13771—Reducing Regulation and Controlling Regulatory Costs

State program amendments are not regulatory actions under Executive Order 13771 because they are exempt from review under Executive Order 12866.

Executive Order 12988 - Civil Justice Reform

The Department of the Interior has reviewed this rule as required by section 3(a) of Executive Order 12988. The Department has determined that this **Federal Register**

notification meets the criteria of Section 3 of Executive Order 12988, which is intended to ensure that the agency reviews its legislation and proposed regulations to eliminate drafting errors and ambiguity; that the agency writes its legislation and regulations to minimize litigation, and that the agency's legislation and regulations provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Because Section 3 focuses on the quality of Federal legislation and regulations, the Department limited its review under this Executive order to the quality of this **Federal Register** document and to changes to the Federal regulations. The review under this Executive order did not extend to the language of the State regulatory program or to the program amendment that the State of West Virginia drafted.

Executive Order 13132 - Federalism

This rule is not a “[p]olicy that [has] Federalism implications” as defined by Section 1(a) of Executive Order 13132 because it does not have “substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government.” Instead, this rule approves an amendment to the West Virginia program submitted and drafted by that State. We reviewed the submission with fundamental federalism principles in mind as set forth in Sections 2 and 3 of the Executive order and with the principles of cooperative federalism, as set forth in SMCRA. *See, e.g.*, 30 U.S.C. 1201(f). Specifically, pursuant to Section 503(a)(1) and (7) (30 U.S.C. 1253(a)(1) and (7)), we reviewed the program amendment to ensure that it is “in accordance with” the requirements of SMCRA and “consistent with” the regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175, and have determined that it has no substantial direct effects on federally recognized Tribes or on the distribution of power and responsibilities between the Federal Government and Tribes. Therefore, consultation under the Department's tribal consultation policy is not required. The basis for this determination is that our decision is on the West Virginia program, which does not include Tribal lands or regulation of activities on Tribal lands. Tribal lands are regulated independently under the applicable, approved Federal program.

Executive Order 13211 – Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to prepare a Statement of Energy Effects for a rulemaking that is: (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not a significant energy action under the definition in Executive Order 13211, a Statement of Energy Effects is not required.

Executive Order 13045—Protection of Children from Environmental Health Risks and Safety Risks

This rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866; and this action does not address environmental health or safety risks disproportionately affecting children.

National Environmental Policy Act

Consistent with sections 501(a) and 702(d) of SMCRA (30 U.S.C. 1251(a) and 1292(d), respectively) and the U.S. Department of the Interior Departmental Manual, part 516, section 13.5(A), state program amendments are not major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 3701 *et seq.*) directs us to use voluntary consensus standards in our regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. (OMB Circular A-119 at p. 14). This action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with SMCRA.

Paperwork Reduction Act

This rule does not include requests and requirements of an individual, partnership, or corporation to obtain information and report it to a Federal agency. As this rule does not contain information collection requirements, a submission to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) does not have an annual effect on the economy of \$100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to constitute a major rule.

Unfunded Mandates Reform Act

This rule will not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than \$100 million per year. The rule does not

have a significant or unique effect on State, local, or Tribal governments or the private sector. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to impose an unfunded mandate. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 11, 2019.

Thomas D. Shope, Regional Director
North Atlantic - Appalachian Region

Editorial note: This document was received for publication by the Office of the Federal Register on February 20, 2020.

For the reasons set out in the preamble, 30 CFR part 948 is amended as set forth below:

PART 948 - WEST VIRGINIA

1. The authority citation for part 948 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 948.15 is amended by adding the entry “W.Va. Code 22-3-11(g) and (h) (qualified) W. Va. Code 22-3-20 W. Va. Code 22-3-21 CSR 110-29-1 through 6, Special Reclamation Tax Credit Rule (qualified)” to the table in chronological order by “Date of publication of final rule” to read as follows:

§ 948.15 Approval of West Virginia regulatory program amendments.

* * * * *

Original amendment submission dates	Date of publication of final rule	Citation/description
*** August 14, 2013 August 7, 2014	** [<u>Insert date of publication in the Federal Register</u>]	** W.Va. Code 22-3-11(g) and (h) (qualified) W. Va. Code 22-3-20 W. Va. Code 22-3-21 CSR 110-29-1 through 6, Special Reclamation Tax Credit Rule (qualified)

[FR Doc. 2020-03751 Filed: 3/3/2020 8:45 am; Publication Date: 3/4/2020]